



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Ms. Joni M. Vollman
Assistant County Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-2647

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119267.

The Harris County District Attorney's Office received a request to review the "criminal file" concerning a criminal prosecution relating to the requestor's client. In response to the request, you submit to this office for review the information which you assert is responsive. You state that "[c]ertain documents, including documents concerning basic arrest information, will be disclosed to the requestor." As for the remaining information at issue, you contend that sections 552.101 and 552.108 protect the information at issue from disclosure. We have considered the arguments and exceptions you raise and reviewed the submitted information.

Initially, we note that included among the submitted information you seek to withhold are summaries and conclusions of polygraph examinations administered to the requestor's client and another individual. Texas law prohibits the public disclosure of the report and results of a polygraph examiner's examination.¹ V.T.C.S. art. 4413(29cc). However, we note that article 4413(29cc) provides that the examinee of a polygraph examination has a special right of access to the results of his or her polygraph examination. V.T.C.S. art. 4413(29cc), § 19A(c)(1). In this instance, the submitted records contain the polygraph test results of the requestor's client and another individual. The District

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section also encompasses information protected by other statutes.

Attorney's Office is barred from releasing the *results* of the polygraph examinations to anyone except as specifically provided by section 19A of article 4413(29cc), V.T.C.S. See also Open Records Decision No. 430 (1985). We conclude, therefore, that the requestor is entitled to a copy of polygraph examiner's report concerning the requestor's client, however, the polygraph results for the other named individual must be withheld from public disclosure to the requestor by virtue of section 19A of article 4413(29cc) of the Code of Criminal Procedure.²

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. A review of the

²Although you have raised section 552.108 of the Government Code as an exception to disclosure for the submitted records, we note that the Open Records Act's exceptions do not, as a general rule, apply when the release of information is expressly controlled by other statutes. Open Records Decision No. 525 (1989).

records at issue reveals that the prosecution of this matter "did not result in a conviction or deferred adjudication." In your brief to this office, you state that "[t]he attached Harris County J.I.M.S. sheet demonstrates that the case against this defendant was not billed by the grand jury." Accordingly, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to the requested information.³

As you have noted, the District Attorney's Office must provide the requestor with the basic front page offense report information in the submitted documents, including a detailed description of the offense. Front page offense report information is the public, basic information required to be disclosed. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, we conclude that, except for basic front page information, the requested records may be withheld under section 552.108(a)(2) of the Government Code, though the district attorney's office also has discretion to release all or part of this information that is not otherwise confidential by law.⁴ Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 119267

³Although you also asserted that the submitted documents constitute the work product of prosecutors concerning the criminal case, we note that most of the records consisted of Harris County Sheriff's records.

⁴We note that some of the information in the submitted documents is also confidential by law. Therefore, if you choose to waive your right to withhold the information under section 552.108, we urge you to exercise caution in releasing the information to the public. See Gov't Code § 552.352; see also Open Records Decision No. 565 (1990) (information generated by Texas Crime Information Center or National Crime Information Center must not be made available except in accordance with federal regulations).

Enclosures: Submitted documents

cc: James Grantham
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(w/o enclosures)